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2 UNITED STATES DISTRICT COURT
3 DISTRICT OF NEVADA
4

5 BLAKE L. ANDERSON,

6 Petitioner,

7 v.

8 ATTORNEY GENERAL, *et al.*,

9 Respondents.
10

Case No. 3:18-cv-00502-HDM-WGC

ORDER

11
12 In this habeas corpus action, on November 5, 2018, the Court screened the
13 petition under Rule 4 of the Rules Governing Section 2254 Cases in the United States
14 District Courts. See Order filed November 5, 2018 (ECF No. 11).

15 In his petition, the petitioner, Blake L. Anderson, states that his direct appeal from
16 his judgment of conviction is still pending. See Petition for Writ of Habeas Corpus (ECF
17 No. 12). Therefore, the Court determined that it is likely that this federal habeas corpus
18 action is premature, and the Court ordered Anderson to show cause why this action
19 should not be dismissed because of his failure to exhaust any claim in state court, and
20 because this action is barred by the *Younger* abstention doctrine. See Order filed
21 November 5, 2018 (ECF No. 11).

22 A state prisoner appealing for habeas corpus relief in federal court must first
23 exhaust available state court remedies before presenting his claims in the federal court.
24 To satisfy the exhaustion requirement regarding a claim, the claim must have been fairly
25 presented to the state courts completely through to the highest state court available.
26 See, e.g., *Peterson v. Lampert*, 319 F.3d 1153, 1156 (9th Cir. 2003) (en banc); *Vang v.*
27 *Nevada*, 329 F.3d 1069, 1075 (9th Cir. 2003). In the state courts, the petitioner must
28 refer to the specific federal constitutional guarantee he believes has been violated, and

1 he must state the facts that he claims entitle him to relief on the federal constitutional
2 claim. See, e.g., *Shumway v. Payne*, 223 F.3d 983, 987 (9th Cir. 2000). That is, the
3 petitioner must present the state courts with both the operative facts and the federal
4 legal theory upon which the claim is based. See, e.g., *Castillo v. McFadden*, 399 F.3d
5 993, 999 (9th Cir. 2005). The exhaustion requirement insures that the state courts, as a
6 matter of federal-state comity, will have the first opportunity to pass upon and correct
7 alleged violations of federal constitutional guarantees. See, e.g., *Coleman v. Thompson*,
8 501 U.S. 722, 731 (1991).

9 Even when claims in a federal habeas petition have been fully exhausted in state
10 court, a federal court will not entertain a habeas petition seeking intervention in a
11 pending state criminal proceeding, absent special circumstances. See, e.g., *Sherwood*
12 *v. Tomkins*, 716 F.2d 632, 634 (9th Cir. 1983); *Carden*, 626 F.2d at 83-85. This rule of
13 restraint, grounded on principles of comity, stems from the Supreme Court's decision in
14 *Younger v. Harris*, 401 U.S. 37 (1971). Under the rule, federal courts may not interfere
15 with pending state criminal proceedings absent extraordinary circumstances.

16 Anderson responded to the Court's November 5 order on November 17, 2018
17 (ECF No. 17). In that filing, Anderson makes no showing that he has exhausted any
18 claim in state court relative to the judgment of conviction that he challenges in this case.
19 Furthermore, Anderson does not show that he has completed the direct appeal from the
20 judgment of conviction, that the judgment of conviction is final, or that this action is not
21 barred by the *Younger* abstention doctrine.

22 The Court concludes, from Anderson's petition, and from his response to the
23 November 5 order, that this action is premature, that Anderson's petition is wholly
24 unexhausted in state court, and that this action is barred by the *Younger* abstention
25 doctrine. This action will be dismissed, without prejudice to Anderson initiating a new
26 federal habeas corpus action after the judgment of conviction is final, and after he has
27 exhausted his claims in state court.
28

IT IS THEREFORE ORDERED that the petitioner's Request for Submission (ECF Nos. 18, 20) and Request for an Order Shortening Time (ECF No. 19) are **DENIED** as moot.

IT IS FURTHER ORDERED that this action is **DISMISSED WITHOUT PREJUDICE**.

IT IS FUTHER ORDERED that a certificate of appealability is denied, as jurists of reason would not find the Court's dismissal of this action to be debatable or incorrect.

IT IS FURTHER ORDERED that The Clerk of the Court is directed to enter judgment accordingly and close this case.

DATED THIS 27th day of December, 2018.

Howard D McKibben

 HOWARD D. MCKIBBEN,
 UNITED STATES DISTRICT JUDGE